

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:) CHAPTER 7
)
JANICE MARIE ELLIOTT,) CASE NO. 07-62885
)
Debtor.) JUDGE RUSS KENDIG
)
) MEMORANDUM OF OPINION
) (NOT INTENDED FOR
) PUBLICATION)

This matter is before the court on Debtor's Application to Proceed *In Forma Pauperis* (hereafter "application") filed on September 27, 2007. On October 1, 2007, the court entered an order requesting additional documents from debtor. The documents were submitted on October 16, 2007.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and is premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The court will first determine whether Debtor's income is 150 percent of the poverty level. According to the Department of Health and Human Services 2007 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/07poverty.shtml>, the poverty income for a family of one is \$10,210.00. At 150 percent of poverty, the poverty income is \$15,315.00 annually, or \$1,276.75 per month.

Form B22A (the "means test") indicates Debtor's Annualized Current Monthly Income is \$20,150.04, which comports with the monthly gross earnings of \$1,679.17 on Schedule I. Debtor submitted a pay history for pays dated June 8, 2007 through October 12, 2007 which indicates that Debtor's average gross biweekly pay is \$849.32, so Debtor is on track to make \$22,082.32 this year. Debtor's pay stub for the period from September 1, 2007 to September 14, 2007 indicates Debtor has earned \$15,486.58 in gross wages for the year to date. Further, a copy of her 2006 federal income tax return shows an adjusted gross income of \$17,954.00, plus a \$539.00 refund. Clearly, all of the figures provided by Debtor demonstrate that she is above the 150% poverty threshold. Thus, Debtor has not satisfied the first prong of the test and therefore is not eligible to have the filing fee waived. The application to proceed *in forma pauperis* is **DENIED**.

Upon review of Debtor's Schedule J, the court notes that Debtor's budget is reasonable and therefore will permit Debtor to pay the filing fee in monthly installments of \$75.00 until the fee is paid in full. Debtor may pay the amount in full anytime during the payment plan.¹ The first payment is due by November 5, 2007. If paying by mail, Debtor shall send a money order, payable to Clerk, United States Bankruptcy Court, to United States Bankruptcy Court, 201 Cleveland Ave., S.W., Canton, OH 44702. If paying in person, Debtor shall bring either the exact amount of cash or a money order, payable to Clerk, United States Bankruptcy Court, to the Clerk's Office. Failure to pay the filing fee in accordance with this order will result in dismissal of the case.

An order in accordance with this decision shall be issued immediately.

/s/ Russ Kendig

RUSS KENDIG OCT 22 2007
U.S. BANKRUPTCY JUDGE

Service List:

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¹ The payment schedule is as follows:

November 5, 2007:	\$75.00
December 5, 2007:	\$75.00
January 4, 2008:	\$75.00
February 4, 2008:	\$74.00